IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 15176 of 2007
Date of decision : December 11, 2007

1. CWP No.15176 of 2007

Ram Pal & others vs State of Haryana & others

2. CWP No. 15776 of 2007

Darshan Singh & others vs State of Haryana & others

3. CWP No. 16427 of 2007

Ranjit Singh & others vs State of Haryana & others

4. CWP No. 16441 of 2007

Mukandi Lal & others vs State of Haryana & others

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

***

Present : Mr.Puneet Bali & Mr.R.S.Mamli, Advocates
for the petitioners.

Mr.Ashish Kapoor, Addl. A.G.Haryana
for respondents No.1 to 4.

Mr.S.K.Garg, Advocate,
for respondents No.5 to 8, 10, 12 to 17 & 19.

***

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

***

RAJIVE BHALLA,J

This order shall dispose of CWP Nos.15176, 15776, 16427 and 16441 of 2007, as common questions of law and fact are involved therein.

The petitioners pray for the issuance of a writ in the nature of

certiorari/mandamus directing the respondents to excavate the Dadupur Nalvi distributory, as per notification No.5766/11L, dated 25.5.2007, issued under Section 4 of the Land Acquisition Act, and not to alter the alignment of the canal in such a manner as to render necessary acquisition of their land.

These writ petitions have been filed by landowners of villages Sambhalkhi, Nangla, Channi and Haldari, asserting that the alignment of the distributory is being changed so as to save the private respondents' land from acquisition. Resultantly, the petitioners' lands are being acquired.

The State of Haryana framed an irrigation scheme known as `Dadupur Nalvi Irrigation Scheme', and vide notification, dated 25.5.2007, proposed to acquire land in various villages, including lands belonging to the private respondents.

Counsel for the petitioners contend that in order to save their lands from acquisition, the private respondents exerted political influence, and coerced the Irrigation Department into altering the course of the canal. This alteration in the course of the canal would lead to the acquisition of the petitioners' land and release of the private respondents' land. It is asserted that the proposed re-alignment is occasioned by mala fides and undue influence, as the only object of the re-alignment is to save the private respondents' land.

It is contended that a similar writ petition, pertaining to this very canal, namely, CWP No.8876 of 2005, Tarsem Singh and others, was filed by residents of village Padlu, impugning the alteration of the proposed alignment. Vide judgment, dated 12.8.2005, the writ petition was allowed and the respondents were directed to excavate the canal, as per plan, dated

5.10.2004. The Special Leave Petition, filed against the aforementioned judgment, was dismissed. Thereafter, Sukhchain Singh and others of village Padlu, filed CWP No.4693 of 2007 once again impugning another proposed change of alignment. Vide judgment, dated 31.7.2007, the said writ petition was dismissed on a statement, made by the respondents that they were not deviating from the original plan/alignment.

It is argued that despite the aforementioned orders, the respondents have unilaterally, and without just cause, decided to alter the alignment of the canal in the petitioners' villages, thus, releasing the private respondents' land and proposing to acquire the petitioners' lands. It is, therefore, prayed that as the dispute, raised herein, is squarely covered by the decisions, rendered in the aforementioned writ petitions, the present writ petitions be allowed and the respondents be directed not to deviate from the original alignment of the canal.

Counsel for the State of Haryana, by placing reliance upon the reply, filed by Shri Harmail Singh, Superintending Engineer/SYL WS Circle, Ambala, submits that the land, in these writ petitions, is required for construction of the Nalvi Distributory, an important part of Dadupur Nalvi Irrigation Scheme. It is submitted that while executing the project, it came to the notice of the authorities that a portion of the canal would require re-alignment. It was eventually decided that the canal should be re-aligned, as shown in the site plan, Annexure P-IV. The alignment would reduce the length of the canal by about 400 feet, thus, leading to a reduction in the cost of the project. It is vehemently argued that the contention, urged by counsel for the petitioners, that the alignment has been altered at the behest of the private respondents, is factually incorrect.

It is further submitted that the judgments of this Court, relied upon by counsel for the petitioners, do not apply to the present controversy. CWP No. 8876 of 2005 arose, as the alignment was proposed to be altered in village Padlu. It was held that as the proposed change would lead to the introduction of two curves, requiring the State to incur extra expenditure the canal be excavated, as per the original alignment. As regards the judgment, in CWP No.4693 of 2007, it is submitted that this writ petition also arose from village Padlu and the affidavit, filed by the Superintending Engineer, Hathni Kund Barrage, Circle Division, Jagadhri, that the original alignment had not been altered, was accepted. As the present writ petitions relate to other villages and a different part of the canal, the aforementioned judgments are irrelevant.

We have heard learned counsel for the parties and perused the paper book, as also the documents appended thereto.

At the very outset, it would be necessary to mention that the lands, which are subject matter of the present writ petitions, are situated in villages Sambhalkhi, Nangla, Channi and Haldari, whereas the lands, involved in CWP No.8876 of 2005 and 4693 of 2007, reliance whereon has been placed by counsel for the petitioners, are situated in village Padlu. The grievance in the aforementioned writ petitions, was that the alignment of the canal had been altered, so as to save a private brick kiln. It was found as a matter of fact, that the new alignment was unwarranted and, therefore, the respondents were directed to excavate the canal, as per the original plan, dated 5.10.2004. The directions, issued in the above writ petitions, were, therefore, in the context of facts, obtaining in the aforementioned writ petitions and would be borne out by a re-production of

a relevant extract from the judgment, rendered in CWP No.8876 of 2005, as under :-

> " It would hardly make any difference in so far as the dislocation of the persons whose land is situated in the area, whether the canal is located on the plan proposed on October 05, 2004, or as it has now finalized. Be that as it may, the seriousness of the issue of instant change can be determined from the fact that by this alternation in the alignment two curves have been introduced in the canal. Had the original plan dated October 05, 2004 been enforced, these two curves world have been unnecessary. Mr. Dalbir Singh, Superintending Engineer, Department of Irrigation, Haryana, who has assisted us during the hearing of this case acknowledges the fact that in constructing these two curves, the respondents would have to incur more cost than that which it would have had to incur while constructing the canal over the plan proposed on October 05, 2004. Needless to mention, more the curves and bends in an irrigation channel, more are the problems involved.
>
> In view of above, we are satisfied that there was no justification for the respondents to have altered the earlier plan dated October 05, 2004, so as to retire the canal in questions to pass over the land of the petitioners.
>
> In view of the above, the instant writ petition is

> allowed. The action of the respondents to relocate the canal over the land of the petitioners is set aside. It will be open to the respondents to relocate the land, if they be so advised, in terms of the plan dated October 05, 2004."

It is, thus, apparent that the directions, issued by this Court, relate to the proposed change of alignment of the canal in village Padlu, and in view of the facts, pleaded in the aforementioned petition.

As regards the order in CWP No.4693 of 2007, Sukhchain Singh and others vs State of Haryana and another, decided on 31.7.2007, a perusal thereof reveals that land owners of village Padlu once again approached this Court against an apprehended alteration of the alignment, in violation of the directions, issued in CWP No. 8876 of 2005. The Superintending Engineer concerned filed an affidavit, deposing therein that the canal would be excavated as per the plan, dated 5.10.2004. The writ petition was dismissed.

We are, thus, constrained to hold that the decisions in the writ petitions, relied upon by counsel for the petitioners, pertain to an attempted alteration of the alignment of the canal in village Padlu, and as the petitioners herein are landowners of villages Sambhalkhi, Nangla, Channi and Haldari, the directions, issued in the aforementioned writ petitions, directing the excavation of the canal, as per the plan, dated 5.10.2004, would be inapplicable to these writ petitions.

As regards the contention that the proposed alteration in the alignment is intended to save land, belonging to the private respondents, suffice it to say that no material has been placed on record that would enable us to uphold the above contention. The respondents have specifically

asserted that alteration in the alignment would shorten the length of the canal by 400 feet, thus, reducing the cost of the project by a large amount.

We find no reason to doubt the bona fides of the respondents, and to hold to the contrary. Even otherwise, matters of alignment, the course of a canal and any subsequent alteration therein are best left to the wisdom of canal authorities, except where it can be demonstrated that the proposed alignment is mala fide or arbitrary.

In view of what has been stated herein above, we find no merit in these writ petitions, which are dismissed, with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

December 11 , 2007
'kk'